

AMENDED IN ASSEMBLY APRIL 6, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2298

Introduced by Assembly Member Weber

February 18, 2016

An act to ~~amend Section 13956 of the Government Code, and to~~ amend Section 186.34 of, and to add Section 186.35 to, the Penal Code, relating to criminal gangs.

LEGISLATIVE COUNSEL'S DIGEST

AB 2298, as amended, Weber. Criminal gangs.

~~Existing law generally provides for the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation and Government Claims Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law sets forth eligibility requirements and limits on the amount of compensation the board may award, and requires the application for compensation to be verified under penalty of perjury. Existing law establishes limits on eligibility, including, among others, because of the victim's involvement in the crime, as specified.~~

~~This bill would provide that an application for compensation would not be denied on the basis of the applicant's membership or applicant's family member's membership in, association with, or affiliation with, a gang, or on the basis of the applicant's designation or applicant's family member's designation as a suspected gang member, associate, or affiliate in a shared gang database, as defined.~~

Existing law, the California Street Terrorism Enforcement and Prevention Act (act) and provides specified punishments for certain crimes committed for the benefit of, at the direction of, or in association with, a criminal street gang, as specified. ~~The act authorizes injunctions against specified gang activity, as provided.~~ The act defines a “shared gang database” as having various attributes, including, among others, that the database contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate. Existing law requires a law enforcement agency, before designating a person as a suspected gang member, associate, or affiliate in the database, to provide a written notice to the person’s parent or guardian, if the person is a minor.

This bill would require the notice described above to be provided to an adult before designating a person as a suspected gang member, associate, or affiliate in the database. The bill would require these databases to comply with federal requirements regarding the privacy and accuracy of information in the database, and other operating principles for maintaining these databases. The bill would require local law enforcement, commencing December 1, 2017, and every December 1st thereafter to submit specified data pertaining to the database to the Department of Justice, and would require the Department of Justice, commencing January 1, 2018, and every January 1st thereafter, to submit a report containing that information to the CalGang Executive Board and to the Legislature. The bill would require that a person designated as a suspected gang member, associate, or affiliate in a shared gang database who has not been convicted of a violation of gang-related crimes, as specified, within 3 years of the initial designation be removed from the database.

By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

The bill would establish a procedure for a person designated in a shared gang database ~~or who is subject to a gang injunction~~ to challenge that designation ~~or injunction~~ through an administrative hearing and appeal to the superior court.

By requiring local law enforcement to implement an appeal process for persons designated in a shared gang ~~database or subject to a gang injunction~~, database, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 13956 of the Government Code is~~
2 ~~amended to read:~~
3 ~~13956. Notwithstanding Section 13955, a person shall not be~~
4 ~~eligible for compensation under the following conditions:~~
5 ~~(a) An application may be denied, in whole or in part, if the~~
6 ~~board finds that denial is appropriate because of the nature of the~~
7 ~~victim's or other applicant's involvement in the events leading to~~
8 ~~the crime, or the involvement of the person whose injury or death~~
9 ~~gives rise to the application.~~
10 ~~(1) Factors that may be considered in determining whether the~~
11 ~~victim or derivative victim was involved in the events leading to~~
12 ~~the qualifying crime include, but are not limited to:~~
13 ~~(A) The victim or derivative victim initiated the qualifying~~
14 ~~crime, or provoked or aggravated the suspect into initiating the~~
15 ~~qualifying crime.~~
16 ~~(B) The qualifying crime was a reasonably foreseeable~~
17 ~~consequence of the conduct of the victim or derivative victim.~~
18 ~~(C) The victim or derivative victim was committing a crime~~
19 ~~that could be charged as a felony and reasonably lead to him or~~
20 ~~her being victimized. However, committing a crime shall not be~~
21 ~~considered involvement if the victim's injury or death occurred as~~
22 ~~a direct result of a crime committed in violation of Section 261,~~
23 ~~262, or 273.5 of, or for a crime of unlawful sexual intercourse with~~
24 ~~a minor in violation of subdivision (d) of Section 261.5 of, the~~
25 ~~Penal Code.~~
26 ~~(2) If the victim is determined to have been involved in the~~
27 ~~events leading to the qualifying crime, factors that may be~~

1 considered to mitigate or overcome involvement include, but are
2 not limited to:

3 (A) The victim's injuries were significantly more serious than
4 reasonably could have been expected based on the victim's level
5 of involvement.

6 (B) A third party interfered in a manner not reasonably
7 foreseeable by the victim or derivative victim.

8 (C) The board shall consider the victim's age, physical
9 condition, and psychological state, as well as any compelling health
10 and safety concerns, in determining whether the application should
11 be denied pursuant to this section. The application of a derivative
12 victim of domestic violence under 18 years of age or derivative
13 victim of trafficking under 18 years of age shall not be denied on
14 the basis of the denial of the victim's application under this
15 subdivision.

16 (b) (1) An application shall be denied if the board finds that
17 the victim or, if compensation is sought by, or on behalf of, a
18 derivative victim, either the victim or derivative victim failed to
19 cooperate reasonably with a law enforcement agency in the
20 apprehension and conviction of a criminal committing the crime.
21 In determining whether cooperation has been reasonable, the board
22 shall consider the victim's or derivative victim's age, physical
23 condition, and psychological state, cultural or linguistic barriers,
24 any compelling health and safety concerns, including, but not
25 limited to, a reasonable fear of retaliation or harm that would
26 jeopardize the well-being of the victim or the victim's family or
27 the derivative victim or the derivative victim's family, and giving
28 due consideration to the degree of cooperation of which the victim
29 or derivative victim is capable in light of the presence of any of
30 these factors. A victim of domestic violence shall not be determined
31 to have failed to cooperate based on his or her conduct with law
32 enforcement at the scene of the crime. Lack of cooperation shall
33 also not be found solely because a victim of sexual assault,
34 domestic violence, or human trafficking delayed reporting the
35 qualifying crime.

36 (2) An application for a claim based on domestic violence shall
37 not be denied solely because a police report was not made by the
38 victim. The board shall adopt guidelines that allow the board to
39 consider and approve applications for assistance based on domestic
40 violence relying upon evidence other than a police report to

1 ~~establish that a domestic violence crime has occurred. Factors~~
2 ~~evidencing that a domestic violence crime has occurred may~~
3 ~~include, but are not limited to, medical records documenting~~
4 ~~injuries consistent with allegations of domestic violence, mental~~
5 ~~health records, or that the victim has obtained a permanent~~
6 ~~restraining order.~~

7 ~~(3) An application for a claim based on a sexual assault shall~~
8 ~~not be denied solely because a police report was not made by the~~
9 ~~victim. The board shall adopt guidelines that allow it to consider~~
10 ~~and approve applications for assistance based on a sexual assault~~
11 ~~relying upon evidence other than a police report to establish that~~
12 ~~a sexual assault crime has occurred. Factors evidencing that a~~
13 ~~sexual assault crime has occurred may include, but are not limited~~
14 ~~to, medical records documenting injuries consistent with allegations~~
15 ~~of sexual assault, mental health records, or that the victim received~~
16 ~~a sexual assault examination.~~

17 ~~(4) An application for a claim based on human trafficking as~~
18 ~~defined in Section 236.1 of the Penal Code shall not be denied~~
19 ~~solely because no police report was made by the victim. The board~~
20 ~~shall adopt guidelines that allow the board to consider and approve~~
21 ~~applications for assistance based on human trafficking relying~~
22 ~~upon evidence other than a police report to establish that a human~~
23 ~~trafficking crime as defined in Section 236.1 of the Penal Code~~
24 ~~has occurred. That evidence may include any reliable corroborating~~
25 ~~information approved by the board, including, but not limited to,~~
26 ~~the following:~~

27 ~~(A) A Law Enforcement Agency endorsement issued pursuant~~
28 ~~to Section 236.5 of the Penal Code.~~

29 ~~(B) A human trafficking caseworker, as identified in Section~~
30 ~~1038.2 of the Evidence Code, has attested by affidavit that the~~
31 ~~individual was a victim of human trafficking.~~

32 ~~(5) (A) An application for a claim by a military personnel victim~~
33 ~~based on a sexual assault by another military personnel shall not~~
34 ~~be denied solely because it was not reported to a superior officer~~
35 ~~or law enforcement at the time of the crime.~~

36 ~~(B) Factors that the board shall consider for purposes of~~
37 ~~determining if a claim qualifies for compensation include, but are~~
38 ~~not limited to, the evidence of the following:~~

~~(i) Restricted or unrestricted reports to a military victim advocate, sexual assault response coordinator, chaplain, attorney, or other military personnel.~~

~~(ii) Medical or physical evidence consistent with sexual assault.~~

~~(iii) A written or oral report from military law enforcement or a civilian law enforcement agency concluding that a sexual assault crime was committed against the victim.~~

~~(iv) A letter or other written statement from a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, licensed therapist, or mental health counselor, stating that the victim is seeking services related to the allegation of sexual assault.~~

~~(v) A credible witness to whom the victim disclosed the details that a sexual assault crime occurred.~~

~~(vi) A restraining order from a military or civilian court against the perpetrator of the sexual assault.~~

~~(vii) Other behavior by the victim consistent with sexual assault.~~

~~(C) For purposes of this subdivision, the sexual assault at issue shall have occurred during military service, including deployment.~~

~~(D) For purposes of this subdivision, the sexual assault may have been committed off base.~~

~~(E) For purposes of this subdivision, a “perpetrator” means an individual who is any of the following at the time of the sexual assault:~~

~~(i) An active duty military personnel from the United States Army, Navy, Marine Corps, Air Force, or Coast Guard.~~

~~(ii) A civilian employee of any military branch specified in clause (i), military base, or military deployment.~~

~~(iii) A contractor or agent of a private military or private security company.~~

~~(iv) A member of the California National Guard.~~

~~(F) For purposes of this subdivision, “sexual assault” means an offense included in Section 261, 262, 264.1, 286, 288a, or 289 of the Penal Code, as of the date the act that added this paragraph was enacted.~~

~~(e) (1) Notwithstanding Section 13955, no person who is convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code may be granted compensation until that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, or has been discharged from postrelease community supervision~~

1 or mandatory supervision, if any, for that violent crime. In no case
2 shall compensation be granted to an applicant pursuant to this
3 chapter during any period of time the applicant is held in a
4 correctional institution, or while an applicant is required to register
5 as a sex offender pursuant to Section 290 of the Penal Code.

6 (2) ~~A person who has been convicted of a violent felony listed~~
7 ~~in subdivision (c) of Section 667.5 of the Penal Code may apply~~
8 ~~for compensation pursuant to this chapter at any time, but the award~~
9 ~~of that compensation may not be considered until the applicant~~
10 ~~meets the requirements for compensation set forth in paragraph~~
11 ~~(1).~~

12 (d) ~~The board shall not deny an application for compensation~~
13 ~~on the basis of the applicant's membership or applicant's family~~
14 ~~member's membership in, association with, or affiliation with, a~~
15 ~~gang, or on the basis of the applicant's designation or applicant's~~
16 ~~family member's designation as a suspected gang member,~~
17 ~~associate, or affiliate in a shared gang database as defined in~~
18 ~~Section 186.34 of the Penal Code.~~

19 ~~SEC. 2.~~

20 *SECTION 1.* Section 186.34 of the Penal Code is amended to
21 read:

22 186.34. (a) (1) For purposes of this section, "shared gang
23 database" shall mean any database that satisfies all of the following:

24 (A) Allows access for any local law enforcement agency.

25 (B) Contains personal, identifying information in which a person
26 may be designated as a suspected gang member, associate, or
27 affiliate, or for which entry of a person in the database reflects a
28 designation of that person as a suspected gang member, associate,
29 or affiliate.

30 (C) Is subject to Part 23 of Title 28 of the Code of Federal
31 Regulations. If federal funding is no longer available to a database
32 through the federal Omnibus Crime Control and Safe Streets Act
33 of 1968 (42 U.S.C. Sec. 3711 et seq.), a database shall not have
34 to satisfy this subparagraph to meet the definition of a "shared
35 gang database."

36 (2) A "shared gang database" does not include dispatch operator
37 reports, information used for the administration of jail or custodial
38 facilities, criminal investigative reports, probation reports, or
39 information required to be collected pursuant to Section 186.30.

(3) Notwithstanding subparagraph (C) of paragraph (1), a “shared gang database” includes the CalGang system, operated pursuant to Part 23 of Title 28 of the Code of Federal Regulations.

(b) Notwithstanding subparagraph (C) of paragraph (1) of subdivision (a), a shared gang database, as defined in this section, shall retain records related to the gang activity of the individuals in the database consistent with the provisions contained in Section 23.20(h) of Title 28 of the Code of Federal Regulations.

(c) (1) Commencing December 1, 2017, and annually on December 1 thereafter, any law enforcement agency that elects to utilize a shared gang database, as defined in subdivision (a), shall submit a report to the Department of Justice that contains, by ZIP Code, referring agency, race, gender, and age, the following information:

(A) The number of persons included in the database on the day of reporting.

(B) The number of persons added to the database during the immediately preceding 12 months.

(C) The number of requests for removal of a person from the database received during the immediately preceding 12 months.

(D) The number of requests for removal of a person from the database that were granted during the immediately preceding 12 months.

(E) The number of persons automatically removed from the database during the immediately preceding 12 months.

(2) Commencing January 1, 2018, and annually on December 1 thereafter, the Department of Justice shall submit a report to the CalGang Executive Board and to the Legislature that contains the information collected pursuant to paragraph (1).

(3) A report submitted to the Legislature pursuant to subdivision (a) shall comply with Section 9795 of the Government Code.

(d) (1) To the extent a local law enforcement agency elects to utilize a shared gang database, as defined in subdivision (a), prior to a local law enforcement agency designating a person as a suspected gang member, associate, or affiliate in a shared gang database, or submitting a document to the Attorney General’s office for the purpose of designating a person in a shared gang database, or otherwise identifying the person in a shared gang database, the local law enforcement agency shall provide written notice to the person, and shall, if the person is under 18 years of

1 age, provide written notice to the person and his or her parent or
2 guardian, of the designation and the basis for the designation,
3 unless providing that notification would compromise an active
4 criminal investigation or compromise the health or safety of the
5 minor.

6 (2) The notice described in paragraph (1) shall describe the
7 process for the person, ~~or~~ if the person is under 18 years of age,
8 for his or her parent or guardian, or an attorney working on behalf
9 of the person, to contest the designation of the person in the
10 database. The notice shall also inform the person of the reason for
11 his or her designation in the database.

12 (e) (1) (A) A person, or, if the person is under 18 years of age,
13 his or her parent or guardian, or an attorney working on behalf of
14 the person may request information of any law enforcement agency
15 as to whether the person is designated as a suspected gang member,
16 associate, or affiliate in a shared gang database accessible by that
17 law enforcement agency and what law enforcement agency made
18 the designation. A request pursuant to this paragraph shall be in
19 writing.

20 (B) If a person about whom information is requested pursuant
21 to subparagraph (A) is designated as a suspected gang member,
22 associate, or affiliate in a shared gang database by that law
23 enforcement agency, the person making the request may also
24 request information as to the reason for the designation for the
25 purpose of contesting the designation as described in subdivision
26 (f).

27 (2) The law enforcement agency shall provide information
28 requested under paragraph (1), unless doing so would compromise
29 an active criminal investigation or compromise the health or safety
30 of the person if the person is under 18 years of age.

31 (3) The law enforcement agency shall respond to a valid request
32 pursuant to paragraph (1) in writing to the person making the
33 request within 30 calendar days of receipt of the request.

34 (f) Subsequent to the notice described in subdivision (d), the
35 person to be designated as a suspected gang member, associate,
36 or affiliate, or his or her parent or guardian, may submit written
37 documentation to the local law enforcement agency contesting the
38 designation. The local law enforcement agency shall review the
39 documentation, and if the agency determines that the person is not
40 a suspected gang member, associate, or affiliate, the agency shall

1 remove the person from the shared gang database. The local law
2 enforcement agency shall provide the person and his or her parent
3 or guardian with written verification of the agency's decision
4 within 30 days of submission of the written documentation
5 contesting the designation. If the law enforcement agency denies
6 the request for removal, the notice of its determination shall state
7 the reason for the denial. The person may appeal the denial
8 pursuant to Section 186.35.

9 (g) A person designated as a suspected gang member, associate,
10 or affiliate in a shared gang database who has not been convicted
11 of a violation of Section 186.22 within three years of the initial
12 designation shall be removed from the database.

13 (h) Nothing in this section shall require a local law enforcement
14 agency to disclose any information protected under Section 1040
15 or 1041 of the Evidence Code or Section 6254 of the Government
16 Code.

17 ~~SEC. 3.~~

18 *SEC. 2.* Section 186.35 is added to the Penal Code, to read:

19 186.35. (a) A person who is listed by a law enforcement agency
20 in a shared gang database ~~or is subject to a gang injunction~~ as a
21 gang member, suspected gang member, associate, or affiliate may
22 contest that designation ~~or being subject to the gang injunction~~
23 pursuant to this section. The person may contest the designation
24 initially pursuant to this ~~section, or other section~~ or a denial as
25 specified in subdivision (f) of Section 186.34.

26 (b) The person may request an administrative hearing to review
27 the designation ~~decision or applicability of the injunction. A person~~
28 ~~may challenge both a designation and gang injunction in one~~
29 ~~proceeding.~~ *decision.*

30 (c) An administrative hearing shall be held within 90 calendar
31 days following the receipt of a request for an administrative
32 hearing. The person requesting the hearing may request one
33 continuance, not to exceed 21 calendar days.

34 (d) The administrative hearing shall be conducted in accordance
35 with written procedures established by the agency. The hearing
36 shall provide an independent, objective, fair, and impartial review
37 of a contested designation.

38 (e) The agency shall appoint or contract with qualified examiners
39 or administrative hearing providers that employ qualified examiners
40 to conduct the administrative hearings. Examiners shall

1 demonstrate those qualifications, training, and objectivity necessary
2 to conduct a fair and impartial review.

3 (f) The examiner's decision following the administrative hearing
4 may be personally delivered to the person by the examiner or sent
5 by first-class mail, and, if the designation is not canceled, shall
6 include a written reason for that denial.

7 (g) Within 30 calendar days after the mailing or personal
8 delivery of the examiner's decision, the person may seek review
9 by filing an appeal to be heard by the superior court where the
10 appeal shall be heard de novo. A copy of the notice of appeal shall
11 be served in person or by first-class mail upon the agency by the
12 person. For purposes of computing the 30-calendar-day period,
13 Section 1013 of the Code of Civil Procedure shall be applicable.

14 (h) The fee for filing the notice of appeal is as provided in
15 Section 70615 of the Government Code. The court shall notify the
16 person of the appearance date by mail or personal delivery. The
17 court shall retain the fee under Section 70615 of the Government
18 Code regardless of the outcome of the appeal. If the court finds in
19 favor of the person, the amount of the fee shall be reimbursed to
20 the person by the agency.

21 (i) The law enforcement agency has the burden of demonstrating
22 active gang membership, associate status, or affiliate status to the
23 court by clear and convincing evidence.

24 (j) A successful challenge to the designation shall result in the
25 removal of the person from the shared gang database or the
26 contestant not being subject to the injunction, or both. database.

27 ~~SEC. 4.~~

28 *SEC. 3.* If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.